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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Numbering Resource Optimization

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CC Docket No. 99-200

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

**COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

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SUMMARY

The FCC, state public utility commissions, the North American Numbering Plan Administrator (“NANPA”) and the industry have been working together over the past few years to transform the nation’s numbering system from one that was designed for a monopoly service environment into one that is optimized for a fully competitive marketplace. This transformation has required the difficult balancing of the need to use numbering resources efficiently with the need to avoid imposing unnecessary costs, particularly because many of the optimization measures under consideration have never been tested.

As with all transformations, the effectiveness of various optimization measures will only become fully apparent with the passage of time. During the past year, several major optimization measures were implemented, resulting in a fundamental change in the way that numbering resources are allocated, assigned, utilized and returned. Although these changes may dramatically improve the efficiency with which carriers utilize numbering resources, rate center consolidation, which directly addresses the root cause of inefficient numbering utilization, has yet to be completed to any significant extent nationally. Therefore, PCIA urges the Commission to sponsor workshops and hearings on rate center consolidation with the participation of state public utility commissions and all industry segments.

Despite the demand for more telephone numbers, which is exacerbated in areas where rate centers have not been consolidated, states are increasingly reluctant to implement new area codes. Instead, many states appear to be using the rationing process to delay the introduction of new area codes, which creates artificial number scarcity rather than facilitating the seamless implementation of area code relief. As the Commission knows, no industry segment is impacted greater by rationing than the wireless industry due to the high utilization and subscriber growth

rates that wireless carriers typically have. Frequently during the last six months, these carriers' plans to enter new markets or to introduce new services have been thwarted, or their ability to continue competing vigorously has been inhibited.

Due to these circumstances, PCIA supports the consensus proposal for phased-in area code overlays presented by PCIA and its wireless partners and styled by the FCC as the "Joint Wireless Commenters." The consensus proposal will give all carriers that need telephone numbers a measure of relief in areas where states have been reluctant to implement timely area code relief. The proposal would allow states to implement area code relief on an expedited basis by waiving the ten-digit dialing rule for a strictly limited period of time. Although PCIA is very concerned about the level of discrimination that non-LNP-capable carriers will experience during this time, PCIA's members agree that having no realistic ability to obtain numbers is a greater evil than the discrimination that non-LNP-capable carriers will face temporarily.

For similar reasons, PCIA urges the FCC to create a safety valve that allows carriers to obtain needed numbering resources where they are unable to meet the utilization threshold in a given rate center. Utilization thresholds are currently being implemented, and thus their full impact on carriers and numbering utilization is untested. A safety valve procedure will ease unnecessary burdens on the FCC, state commissions, and carriers that will occur if the utilization thresholds prove to have unintended consequences under certain circumstances, because carriers will not have to file, and the FCC and/or state commissions will not have to consider, petitions for waivers of the utilization threshold on a case-by-case basis. There is no downside to the proposed safety valve procedure, because it will simply go unused if it subsequently proves to be unnecessary.

PCIA again urges the FCC to reject all proposals for market-based allocation systems for numbering resources. First, the FCC does not have the authority to implement a market-based allocation system. Second, market-based allocation systems would not improve the efficiency with which carriers utilize numbering resources because it does not address the causes of inefficient usage. Third, market-based allocation systems would inject discrimination into the numbering system and create significant incentives for anti-competitive behavior.

PCIA also urges the FCC not to withhold numbering resources from carriers or their related entities for violations of the numbering requirements. The addition of withholding numbering resources to the FCC's current array of enforcement tools would require the FCC to create new procedures to protect the due process rights of carriers suspected of violating numbering requirements.

Finally, PCIA submits that the FCC should not delegate additional authority to the states to conduct independent audits, or grant states direct access to NANPA's database. Both of these measures are unnecessary, because the current rules achieve the same purpose without imposing additional burdens or creating additional security risks to confidential carrier information.

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COMMENTS OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association (“PCIA”), on behalf of its carrier members, hereby respectfully submits its comments on the Federal Communications Commission’s (“Commission”) Second Further Notice of Proposed Rulemaking in the above-captioned proceeding. PCIA members have supported many of the Commission’s actions in this very important docket. PCIA members also support those additional measures proposed in the *Second Further Notice* that maintain carrier accountability for efficient number utilization without imposing unduly burdensome costs or duplicative, intrusive or unnecessary regulations. PCIA urges the Commission to preserve this balance when taking additional critical steps towards ensuring that telephone numbers are readily available to carriers that need them.

INTRODUCTION

During the last year, the telecommunications industry has seen substantial changes in the manner in which telephone numbers are allocated and utilized. The changes are due in large part to the cooperative efforts of the FCC, state commissions and the industry to implement needs-based allocation procedures, federal reporting requirements and number pooling. Although there are differences in approach, no one can doubt the sincerity of the efforts at all levels to increase the

efficiency with which numbering resources are utilized, to avoid discriminatory treatment of various groups of carriers and consumers, and to minimize the impact of optimization measures on consumers. At the behest of the FCC and state commissions, the industry is implementing pooling in the top 100 MSAs, and carriers are now waiting to apply for growth codes until they have met specific utilization thresholds. Carriers are also required to be prepared to demonstrate to the Commission in the context of an audit that they are in compliance with the Commission's numbering rules.

Despite the progress that has been made, the FCC, state commissions and the industry have not been able to remove the main stumbling block that remains at the core of the current numbering allocation system: the lack of rate center consolidation. This Commission has repeatedly stressed the importance of rate center consolidation and encouraged states to consolidate rate centers wherever possible. It has done so in the belief that rate center consolidation, "prior to implementing 1000 block number pooling in area code relief, will increase the efficiency of these measures, because carriers will need fewer initial and growth numbering resources to provide service in a given area."¹ Those states that have implemented some measure of rate center consolidation have seen dramatic improvements in their utilization. PCIA recognizes that rate center consolidation may not be feasible in some places, but many state public utility commissions have yet to perform a detailed cost-benefit analysis of rate center consolidation in order to determine whether it should be implemented in their particular state. As a result, many states do not know whether they have consolidated rate centers to the greatest extent feasible.

Despite the pressure for new numbers that is exacerbated by failure to consolidate rate centers to the greatest extent feasible, states are increasingly reluctant to implement new area codes.

¹ *Second Further Notice* at ¶ 147.

This reluctance places irrational demands on the rationing process, and thus turns rationing into a mockery. Rather than ensuring that carriers with genuine need have access to adequate numbering resources, rationing plans have become a means to minimize the number of codes that are available for allocation. Used in this manner, rationing plans create artificial number scarcity rather than facilitating the seamless implementation of a new area code.

As the Commission knows, the wireless industry is most immediately and negatively impacted by number rationing. Many wireless carriers have very high utilization and subscriber growth rates, and they do not have access to pooled numbering resources. These wireless carriers desperately need new telephone numbers in order to continue serving consumers and competing in the marketplace with both other wireless carriers and landline carriers. In many circumstances over the last six months, these carriers' plans to enter new markets or to introduce new services have been thwarted, or their ability to continue competing vigorously in a given market has been inhibited.

PCIA worked with some of these wireless carriers to develop and file a consensus proposal for phased-in area code overlays. This proposal, on which the Commission now seeks comment, advocates a "phased-in" area code overlay that gives carriers who are in dire need of telephone numbers a measure of relief despite reluctance by certain states to implement new area codes on a timely basis. Consensus on this proposal was not easy to reach, and all of its supporters were concerned about the level of discrimination that non-LNP-capable carriers will face as a result of it. However, the carriers all agree that the absence of any realistic ability to obtain numbers is a significantly greater evil than temporary discrimination in the assignment of numbers. Therefore, PCIA and the participating wireless carriers reached consensus that phased-in overlays will be tolerable if they are, among other things, strictly limited in duration and scope.

With this in mind, PCIA urges the Commission to take whatever steps are necessary to ensure not only that telephone numbers are used efficiently, but also that they continue to remain immediately available to those carriers that need them. Numbers are, after all, as critical to the ability to provide service as any physical component of a carrier's network. Without numbers, carriers cannot provide service to the public, and there will be no competitive marketplace.

I. RATE CENTER CONSOLIDATION SHOULD BE A PRIORITY OF THIS COMMISSION

As PCIA has repeatedly emphasized, rate center consolidation allows carriers to use the numbers in an NXX code over a larger area rather than a smaller area in which many numbers remain idle. Significantly, rate center consolidation is superior to virtually all other optimization measures in many areas because it (i) makes vast amounts of numbers available for the lowest cost of any of the proposals; (ii) can be immediately implemented in many areas with little impact on most industry players; and (iii) allows all carriers to utilize numbering resources more efficiently. No other proposal can be implemented so seamlessly or without such significant impact under certain circumstances. Not only does rate center consolidation have an immediate beneficial effect on existing number utilization, it also makes subsequent numbering optimization measures, such as number pooling, more effective by orders of magnitude. In PCIA's view, the rate of exhaust of an NPA is directly tied to the number of rate centers in the NPA. Moreover, the sooner rate center consolidation is implemented, the fewer NXX codes will be needed by new entrants and the more NPAs will remain available. The Commission and the industry simply must take advantage of the opportunities that rate center consolidation presents to the greatest extent feasible.²

² Once an NPA is assigned for relief, it cannot be revoked. Accordingly, rate center consolidation provides the greatest benefit if implemented before another NPA is needed because it can prolong the existing NPA, which may even obviate the need to implement area code relief for the foreseeable future.

PCIA has previously submitted into the record in this proceeding a rate center analysis demonstrating this point, using Chicago and Boston as examples. *See* Attachment A. In Chicago, there are 79 rate centers in the 815 NPA alone, and 202 rate centers in the Chicago LATA.³ If one assumes only eight new carriers enter the Chicago market, a reduction of 50% of the rate centers results in savings of 804 NXX codes. Assuming pooling is implemented, the savings are still substantial as the new carriers would require only 101,000 numbers, as compared to 202,000 numbers.

Area code 310 presents another stark example of the potential benefits of rate center consolidation. In area code 310, the distance between all but one of the rate centers, as measured by their LERG coordinates, is substantially less than 30 miles, yet there are a total of 16 rate centers. This means that every new LNP-capable carrier that participates in a 310 number pool will need to obtain at least 16 blocks of numbers. By contrast, if area code 310 were served by one rate center, then new LNP-capable carriers would only need to obtain one block of numbers. A 1600% gain in available numbers or, conversely, the inefficient use of that many numbers simply cannot be ignored.

Recognizing the benefits of rate center consolidation, the Commission in the *Further Notice* seeks to understand the relationship between rate center consolidation and the separation of rating and routing. The Commission is apparently exploring the extent to which it could achieve some of the benefits of rate center consolidation through other means. PCIA supports the Commission's efforts to explore rate center consolidation to the extent economically feasible, the separation of rating and routing, and many other potential numbering optimization measures. To hasten the dialogue, it may be important for the FCC to sponsor workshops or hearings on rate center

³ These rate centers have been extrapolated from the Local Exchange Routing Guide ("LERG") so in some instances the number of NXX codes needed to rate calls may not be identical to the number of rate centers, or rate districts, shown by the ILEC.

consolidation with the participation of state public utility commissions and all industry segments.

This approach will lead to more intelligent decisions about whether further rate center consolidation will yield significant benefits that outweigh the costs that it imposes.

II. THE COMMISSION SHOULD GRANT WAIVERS OF ITS RULES PROHIBITING TECHNOLOGY-SPECIFIC OVERLAYS TO STATE COMMISSIONS WHO ACT IN ACCORDANCE WITH THE JOINT WIRELESS COMMENTERS' TRANSITIONAL OVERLAY PROPOSAL.

PCIA, AT&T Wireless, Nextel, Verizon Wireless, Verizon Messaging Services, and VoiceStream Wireless (hereinafter referred to as "Joint Wireless Commenters") submitted a proposal to this Commission under which states would be permitted to implement phased-in area code relief.⁴ Under the consensus proposal, state public utility commissions would have the option under certain circumstances to implement "phased-in area code relief" while they conclude their overall area code planning. The driving force behind this phased-in overlay proposal was the dual recognition that area code relief frequently has not been implemented in a timeframe that provides non-LNP capable carriers with a seamless supply of telephone numbers, and that this untenable situation will likely continue to occur. As one of the original Joint Wireless Commenters, PCIA fully supports the proposal, but cautions that the Commission must consider this proposal as a truly integrated whole. Only when all of the elements work together does the proposal both adequately addresses wireless carriers' needs and serves the public interest.

⁴ See Letter from Judith St. Ledger-Roty and Todd D. Daubert, Kelley, Drye & Warren, LLP, to Magalie Roman Salas, FCC, dated November 15, 2000 (joint filing on behalf of PCIA, AT&T Wireless, Nextel, Verizon Wireless, Verizon Wireless Messaging services and VoiceStream Wireless).

A. The Commission Must Reaffirm Its Conclusion That Permanent Service- and Technology-Specific Overlays Are Unlawful.

PCIA previously has described in detail why the phased-in overlay proposal meets the public interest and will not reiterate each point at length.⁵ However, certain questions raised by the Commission in discussing the phased-in area code proposal require specific attention. First, PCIA urges the Commission to ignore requests for the implementation of service- and technology-specific overlays as a “means of avoiding new area codes for home and business phones.”⁶ Non-LNP-capable services, such as wireless services, also are used by individuals and businesses, and, in many instances, compete head-to-head with services offered by wireline carriers. Implementing a long term technology- or service-specific overlay would permanently discriminate against non-LNP-capable carriers in favor of wireline carriers. Doing so would be intolerable and a clear violation of the Commission’s rules. As such, PCIA requests that the Commission reaffirm the finding that long term technology- and service-specific overlays are inherently discriminatory, and thus, unlawful.⁷

Notwithstanding the unlawfulness of long term technology- or service-specific overlays, there are circumstances where an interim phased-in overlay approach is appropriate. The Commission must remember, however, that the question is not and cannot be the extent to which a service- or technology-specific overlay is preferable to an all-services overlay. All-services overlays certainly are preferable to service- or technology-specific overlays. An all-services overlay should always be implemented over an interim phased-in overlay if it can be done within the timeframe necessary to forestall exhaust. Interim non-LNP-capable phased-in overlays are proposed as a

⁵ See Attachment B.

⁶ See *Second Further Notice* at ¶ 128.

⁷ In addition, technology- and service-specific overlays put the Commission in the untenable position of both picking winners and losers as well as creating disparate service categories at a time when convergence between all services is accelerating.

transition to an all-services overlay in those circumstances where that transition is necessary to provide non-LNP-capable carriers with a source of telephone numbers. They are not proposed as a substitute for an all-services overlay or other form of area code relief.

The Commission's statement that conceivably "a state commission could choose to implement a transitional technology-specific overlay to provide numbering resources solely to LNP-capable carriers" is also, in PCIA's view, a non sequitur. Carriers capable of pooling always have the option to take available numbers from the 1000-block pool. If those numbers were to exhaust, the appropriate recourse for a state commission would be to open a new area code, and that area code would feed both those who need 1000-block numbers and those who need whole NXX codes. PCIA is unaware of any circumstance that would negate that course of action.

PCIA wholeheartedly supports the Commission's reaffirmation of the unlawful nature of "take-backs," which affect only one segment, service or technology and its customers. As the Commission recognized in the *Ameritech Order*, "taking back telephone numbers from carriers served by a technology-specific overlay would impose costs on those carriers and their customers"⁸ In the technology- and service-specific overlay context, such costs would be imposed solely on carriers using that technology or providing that service and their customers, and thus would unlawfully discriminate against those carriers in favor of other carriers.

B. The Commission Should Permit States To Implement Phased-In Overlays In Specific Circumstances.

Phased-in overlays should be implemented only for a limited duration to prevent discrimination. In the *Second Further Notice*, the Commission seeks additional comment on how

⁸ See *Second Further Notice* at ¶ 134 (quoting *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech – Illinois*, Declaratory Ruling and Order, 10 FCC Rcd 4596, 4608, ¶ 27 (1995)).

phased-in overlays should operate. For example, as an alternative to the Joint Wireless Commenters' condition that any non-LNP capable carrier-specific overlay be converted to an all-services overlay when the underlying NPA exhausts, the Commission asks whether all phased-in overlays should be converted to all-services overlays "no later than the date by which covered CMRS providers are required to participate in thousands-block number pooling."⁹ PCIA finds no merit in that idea because, if the original NPA has not yet exhausted, it is not clear what benefit would occur by requiring the pooling administrator to begin taking codes from the new NPA, which could strand unused NXXs in the old NPA.

PCIA agrees, however, that it would be appropriate to end waiver of the ten-digit dialing requirement where an underlying NPA has not exhausted by the date that CMRS carriers are required to participate in pooling. PCIA's concern does not involve converting to an all-services overlay too soon; rather, it is troubled by a potential prolonging of the length of time in which carriers in the transitional overlay would be subject to discrimination as a result of the ten-digit dialing disparity.

For this same reason, the Joint Wireless Commenters also proposed that transitional overlays only be established when the original NPA has remaining the greater of "30 NXX codes or a quantity of NXX codes equal to the number of rate centers in the underlying NPA." This condition is critical to ensuring that transitional overlays are not implemented as substitutes for area code relief. Allowing states to use transitional overlays, for example, where a specific overall NPA-wide utilization threshold is met, could result in circumstances where wireless carriers that are non-LNP capable find themselves segregated from the rest of the carrier community for long periods of time, if not forever. These circumstances simply cannot be permitted. The same thing is potentially true in

⁹ See *Second Further Notice* at ¶ 136.

circumstances where a large part of the growth in numbering resource needs comes from the wireless industry. For example, if the NPA-wide utilization threshold is met but the number pool has a sufficient excess of numbers to last for a long period of time, non-LNP capable carriers, including wireless carriers, could be segregated for months, if not years, in violation of the Commission's rules and the statute prohibiting unreasonable discrimination.

III. THE COMMISSION SHOULD NOT REQUIRE PAGING CARRIERS TO PARTICIPATE IN NUMBER POOLING.

In adopting number pooling requirements, the Commission has been conscious of the burdens that implementation of number pooling imposes upon the carrier community. To date, the Commission has not imposed a pooling obligation on non-covered CMRS providers – including paging carriers – because the burdensome costs that it imposes outweighs any potential benefits. PCIA respectfully submits that the Commission's concern continues to be justified, and paging carriers should continue to not be required to participate in number pooling.

In the first instance, the paging industry is comparatively mature. That is, growth of the paging industry has slowed, and it is unlikely over the near term that paging carriers will be putting substantial pressure on the NANP. More likely, paging carriers will continue to serve new customers through existing numbering resources made available to them through churn and will apply for additional numbering resources only as needed to provide service to new geographic areas. If a paging carrier does apply for additional numbering resources, it will have to meet the nationwide utilization threshold, which assures that the carrier has a genuine need for additional numbering resources.

The Commission must also recognize that paging carriers are not subject to any portability obligation in part because the lack of number portability has not been perceived as a barrier to entry in the vigorously competitive paging marketplace. Thus, any requirement that paging

carriers implement pooling would foist upon them, for pooling's sake, the cost of both portability and pooling. Asking this subset of carriers to bear the enormity of that cost is unreasonable and, in effect, penalizes these carriers for a job well done. These costs would also end the ability of paging services to serve as a low-cost alternative to other telecommunications services, and thus some segments of the public would go unserved.

As noted above, paging carriers have traditionally demonstrated among the highest percentage of numbering utilization. Until the ILEC community chose to eliminate reverse billing options, paging carriers most often used telephone numbers across multiple rate centers. To PCIA's knowledge, paging carriers continue to attempt to utilize numbers efficiently and to give back full NXX codes where unnecessary to serve their existing customer bases. Moreover, the paging industry as a whole currently holds a small percentage of the total assigned telephone numbers. Of course, notwithstanding their inability to pool, paging carriers are contributing to the cost of pooling in the top 100 MSAs through their contribution to whatever funding mechanism exists on an ongoing basis.¹⁰ There may also be modifications that can be made within ILEC switches that would allow paging carriers to utilize numbers even more efficiently under Type II interconnection arrangements. Although the FCC should explore these potential modifications, PCIA has no information on the costs, technical feasibility or benefits that can be gained from such modifications. For these reasons, the Commission should not now impose number pooling on paging carriers.

¹⁰ Paging carriers may, in fact, be equated at some level to rural carriers who are not required to be LNP or pooling capable. That is, those markets are comparatively mature markets, not likely to be the subject of considerable infrastructure investment over the short term, and whose contribution of necessity needs to be limited to the economic contribution made by all carriers who utilize telephone numbers.

IV. THE COMMISSION SHOULD ADOPT A SAFETY VALVE THAT WILL ALLOW CARRIERS TO OBTAIN NEEDED NUMBERING RESOURCES WHERE THEY ARE UNABLE TO MEET THE UTILIZATION THRESHOLD IN A GIVEN RATE CENTER.

In adopting a percentage utilization threshold, the Commission recognized that there may be instances where a carrier is in need of telephone numbering resources even though it does not meet the percent utilization threshold in a given rate center. The Commission notes that this may occur where a carrier has multiple switches in the same rate center. From the wireless carrier's perspective, another more likely circumstance is where the carrier's growth projections, based on its historical utilization, demonstrate that the carrier will exhaust its telephone number resources before a new code can be allocated to it and activated in the public switched network.

In recent months, a number of wireless carriers, most of whom were broadband wireless providers, have faced exactly this circumstance. These carriers have had to file petitions with the FCC and state commissions for waiver of the utilization threshold, relief outside of jeopardy procedures and expedited code activation. In those circumstances, both the FCC and state commission generally have labored to ensure that these carriers were able to receive additional resources, but in many instances, the relief was late in coming or, due to circumstances unrelated to carrier need, was not forthcoming at all.

As this Commission has repeatedly emphasized, there must be a continuing supply of telephone numbers to all carriers that demonstrate need, notwithstanding any federal or state dichotomy in jurisdiction, or any other potentially interfering processes. To that end, PCIA supports an automatic safety valve to ensure that carriers who demonstrate a three month or less supply of numbering resources receive either a full NXX code or 1000-block depending upon whether the carrier is participating in a number pool. It is both the safety valve and the automatic nature of that safety valve that are important here. Carriers neither have the time nor the resources to petition

federal or state commissions each time they determine that they will exhaust numbers prior to satisfying the utilization threshold. This is especially true given the nationwide scope of most broadband wireless carriers and the pervasiveness of the problem. Thus, PCIA proposes that carriers who demonstrate a three-month or less supply of numbering resources using a regression analysis based on their prior six months' historical utilization should be automatically entitled to additional numbering resources. Those carriers for which a regression analysis does not demonstrate a three month or less supply of numbering resources nonetheless should also be permitted to demonstrate to the Commission or NANPA that their number utilization warrants receipt of a code notwithstanding their inability to satisfy a fixed percent utilization.

V. THE COMMISSION SHOULD NOT DEVELOP MARKET-BASED APPROACHES FOR ASSIGNING NUMBERING RESOURCES.

In the *Further Notice*, the Commission recognizes that commenters overwhelmingly oppose market-based allocation of numbering resources. Nonetheless, the Commission again seeks comment on establishing a market-based solution, based upon its apparent belief that a flexible market-oriented approach might be able to supplement or supplant existing administrative measures, provided that they are structured on an equitable and nondiscriminatory basis.¹¹ As discussed below, the Commission does not have the authority to implement a market-based approach to allocating number resources. Even if the Commission had the requisite authority, it should not institute a market-based allocation scheme. Doing so would undermine the current allocation of numbering resources as well as invite anticompetitive and discriminatory conduct, ultimately at the expense of the Commission's two underlying goals – providing carriers with timely access to numbering resources and giving consumers their choice of carriers.

¹¹ See *Second Further Notice* at ¶¶ 156-57.

A. The Commission Does Not Have the Authority To Implement A Market-Based Allocation System.

As an initial matter, the Commission does not have the authority to implement a market-based system for allocating numbering resources. In granting the Commission plenary jurisdiction over numbering resources, Congress explicitly defined the scope of the Commission's authority. Specifically, Section 251(e) of the Act provides the Commission with the authority (1) to administer telecommunications numbering and to make such numbers available on an equitable basis; (2) to determine the costs of numbering administration and number portability; and (3) to ensure that the costs of numbering administration and portability are borne by all carriers on a competitively neutral basis.¹²

The Commission's proposed market-based allocation scheme clearly exceeds these boundaries. In the context of numbering, the Commission's authority is limited to determining the costs of numbering administration and number portability; the Commission is not authorized to charge for telephone number resources. Moreover, charging for telephone number resources is contrary to the purpose and spirit of the Act, namely competition. As the Commission repeatedly has stated, in exercising its authority over numbering resources, it seeks to ensure that carriers have the numbering resources they need to compete and bring new and innovative products and services to the marketplace. Charging for numbering resources ultimately might award numbers to the highest bidder and not provide resources to the carrier in need.

¹² 47 U.S.C. § 251(e)(1)-(2).

B. The Commission's Proposed Market-Based Approach Would Lead To Anti-Competitive Conduct and Ultimately Would Prevent Carriers From Obtaining Necessary Numbering Resources.

PCIA is at a loss to understand how market-based methodologies for allocating numbering resources can improve upon the rigorous utilization thresholds and other administrative processes that the Commission has implemented in its most recent orders. In fact, PCIA believes that the opposite is true. Allowing a value to be placed upon telephone numbers in the marketplace, whether through Commission-sponsored auctions or secondary markets, would create incentives to violate the Commission's rules with respect to efficient number utilization and would severely undermine the progress the Commission, states and the industry have made to date. For example, if entities were to pay for telephone numbers, it is unclear on what basis the Commission could reclaim the telephone numbers or implement controls on the telephone numbers' utilization. Just as clearly, auctions for telephone numbers would raise other issues of ownership, including the transfers of control of numbers, that this Commission has successfully avoided to date.

The Commission's whole premise, and indeed the industry's whole premise, in dealing with telephone numbers has been that telephone numbers are a public resource. This Commission repeatedly has concluded as much, citing with approval the CO Code Guidelines stating that "the NANP resources are considered a public resource and are not owned by the assignees. Consequently, the resources cannot be sold, brokered, bartered, or leased by the assignee for a fee or other consideration." CO Code Guidelines, Section 2.1.

Allowing carriers to pay for telephone numbers would result in anticompetitive and discriminatory conduct. PCIA is concerned that carriers who have excess numbering resources would transfer those resources to affiliated entities rather than return them for reassignment to unaffiliated entities in need of numbering resources. Since telephone numbers are allocated on a needs basis, it is illogical to allow a carrier with substantial numbering resources to transfer those

resources to either an affiliated or unaffiliated entity based on price when, in fact, any telephone number blocks that are not needed by that entity should be returned to NANPA.

Moreover, carriers in need of purchasing telephone numbers would be in jeopardy of being the victim of discriminatory treatment and anticompetitive behavior. For example, a carrier would seek to buy numbers in a secondary market only if numbers were unavailable from the NANP from which a carrier should be able to obtain numbers without charge. If numbers were unavailable from the NANP, a carrier would be forced to buy them from a competitor at rates that reflect the price at which the carrier holding the numbers believed it reasonable to allow additional competition. This price would bear no relationship to the purchasing carrier's need for numbering resources. Instead, numbering resources would be priced to limit competitive entry or raise the costs of competitors. Accordingly, requiring carriers to pay for numbering resources would create barriers to competition, particularly for smaller carriers.

Moreover, market-based allocation systems are unnecessary. Carriers obtain numbering resources based on their marketing plans and anticipated need. Carriers do not have any incentives to obtain numbering resources that they do not need, particularly since in many locations carriers already are required to return unused numbers in preparation for pooling. Market-based allocation systems, however, could create incentives for carriers to retain numbers that they do not need, either to sell them to the highest bidder, or to ensure that they do not have to purchase numbering resources in the future.

Rather than develop a market-based allocation system, the Commission should ensure that carriers have timely access to the numbering resources that they need. As part of this obligation, the Commission must ensure that state commissions are not delaying in instituting timely area code

relief. If telephone numbers are made available on a timely basis, there certainly is no need for a market-based allocation system.

C. Numbering Resources Should Not Be Auctioned.

Numbering resources also should not be auctioned in the primary market. PCIA finds the entire concept of auctions at odds with the Commission's commitment to number portability. With number portability, customers are entitled to take their telephone numbers with them if they move among carriers. Carriers who purchased numbers presumably would seek to charge customers additional amounts for the telephone numbers that are ported. Increasing charges to customers who port numbers is at odds with the Commission's commitment to number portability as a vehicle to ensure competitive entry into the local exchange market. The two simply cannot be reconciled.

Additionally, auctions would not improve the efficiency with which carriers use telephone number resources. Several states already have successfully called for the voluntary return of unused telephone numbers. Those telephone numbers in turn can be allocated to carriers in need. If the Commission were to institute auctions, carriers would be reluctant to return unused telephone numbers knowing that they might have to purchase those same numbers in the future or that they could sell them and reap a windfall.

Instituting auctions also imposes numerous additional administrative costs without any corollary benefit. As stated above, auctioning number resources would not increase the efficient use of telephone numbers. As such, the only purpose auctioning numbers serves would be to redistribute the existing supply of telephone numbers – a measure that already is achieved through pooling. Since auctioning numbers does not increase the total amount of telephone numbers available, it will not prolong the life of the NANP in any meaningful way. Accordingly, the administrative costs – not to

mention the ultimate cost to society due to the lack of competition – are too high to justify implementing auctions for telephone number resources.

Auctioning telephone numbers likely would result in discrimination against particular classes of carriers and their consumer customers. Since carriers already have existing numbering resources, auctions for future resources would be discriminatory because some carriers could rely on their existing resources. Moreover, it is too late for the Commission to turn back the clock and now charge carriers a fee for their number inventories. As such, PCIA strongly opposes the Commission's tentative conclusion that carriers should pay for all of the resources that they hold, regardless of when the numbers were obtained. A flat fee for existing numbering resources does not take into account, for example, the critical differences between carriers, such as the revenue per number. Carriers already have developed business plans and obtained numbers in accordance with such plans. Carriers cannot now be forced to assume an additional and unanticipated burden.

VI. THE COMMISSION SHOULD NOT WITHHOLD NUMBERING RESOURCES FROM CARRIERS.

In the *First Report and Order*, the Commission directed NANPA to withhold numbering resources from carriers that fail to comply with the Commission's reporting requirements. In the *Second Report and Order*, the Commission tentatively concludes that, in certain circumstances, numbering resources should be withheld from carriers when related carriers fail to comply with the Commission's mandatory reporting requirements.¹³ The Commission also sought comment on other incentives for parent companies to encourage and require compliance from all of their related reporting carriers.¹⁴ As discussed below, PCIA submits that (1) numbering resources should not be

¹³ See *Second Further Notice* ¶¶ 149-50.

¹⁴ See *id.* at ¶ 150.

withheld from *any* carrier, (2) the Commission does not have the authority to penalize related carriers, and (3) the Commission instead should impose forfeitures as a means of encouraging compliance with its rules.

A. Numbering Resources Should Not Be Withheld For Violating the Commission's Numbering Requirements.

PCIA opposes the Commission's tentative conclusion that carriers that violate the Commission's numbering requirements should be denied numbering resources.¹⁵ Establishing eligibility requirements for growth code applications – including requirements that the applicant file an NRUF report and an MTE worksheet for the relevant rate center – is entirely proper; however, withholding numbering resources as a penalty for potential violations of numbering requirements adversely affects competition and thus is not in the public interest. The Commission consistently has stated that carriers must have timely access to numbering resources that they need to be able to compete effectively as well as to bring innovative new products and services to the marketplace.¹⁶ Withholding numbering resources hampers a carrier's ability to compete effectively in the marketplace and ultimately deprives consumers of their choice of carriers.

Revoking or withholding numbering resources is not a penalty that the Commission should propose lightly. In fact, revoking or withholding numbering resources is akin to revoking a license to the extent that a carrier's operations are temporarily halted. Just as the Commission cannot revoke a license without affording a carrier due process rights, the Commission would be required to afford carriers due process rights in number revocation case. Thus, to withhold numbering resources, the Commission would need to satisfy certain procedural safeguards, such as holding a hearing prior

¹⁵ *Second Report and Order* at ¶ 154.

¹⁶ *See, e.g., Second Further Notice* at ¶ 4.

to determining whether such resources could be appropriately withheld. However, these due process requirements would unduly delay the processing of code applications. Therefore, the FCC should not withhold numbering resources for violating numbering requirements.

B. Numbering Resources Should Not be Withheld From Related Carriers.

PCIA disagrees with the Commission's tentative conclusion that carriers should, in certain instances, have numbering resources withheld when related carriers fail to comply with its mandatory reporting requirements.¹⁷ As an initial matter, the Commission does not have the authority to withhold numbering resources from a carrier due to a related carrier's failure to comply with a Commission requirement. Withholding numbering resources from a carrier that has complied with all of the necessary requirements due to the actions of a related company is an unlawful penalty. Pursuant to sections 501 through 503 of the Act, forfeitures and other penalties are properly imposed against only an entity that violates – or causes to be violated – the Act, rule or order at issue.¹⁸ Forfeitures and penalties cannot be imposed against a carrier that has not committed a violation. Thus, the Commission cannot impose a penalty, whether in the form of withholding numbering resources or otherwise if a particular entity itself has not violated – or caused to be violated – the Act, rule or order at issue.

Moreover, withholding numbering resources from a related carrier invites the potential for discriminatory treatment in favor of corporations based on the way in which they are structured.

¹⁷ See *Second Further Notice* at ¶ 150.

¹⁸ See 47 U.S.C. § 501 (“Any person who willfully and knowingly does or causes or suffers to be done any act, matter, or thing, in this Act prohibited or declared to be unlawful . . . shall . . . be punished for such offense. . . .”); 47 U.S.C. § 502 (applies to “Any person who willfully and knowingly violates any rule, regulation, restriction, or condition made or imposed by the Commission”); 47 U.S.C. § 503 (“Any person who is determined by the Commission . . . to have willfully or repeatedly failed to comply with any of the provisions of this Act or of any rule, regulation, or order issued by the Commission . . .”).

The Commission already has noted that the complexities of corporate structure might thwart its objectives in withholding numbering resources.¹⁹ Due to the numerous possible corporate structures, the Commission could not uniformly impose forfeitures or other penalties against related companies. This problem will become increasingly complex due to the many mergers and acquisitions occurring throughout the industry.

VII. STATE COMMISSIONS SHOULD NOT BE DELEGATED AUTHORITY TO CONDUCT NUMBERING AUDITS.

In the *Second Further Notice*, the Commission sought comment on whether state commissions should be given independent authority to conduct “for cause” and random audits in lieu of or in addition to the national audit program established by the Commission. The Commission should not delegate authority to state commissions to conduct their own “for cause” or random audits. Allowing a state to employ its own auditing process potentially subjects a carrier to fifty separate and concurrent audits, each employing a different standard, not to mention any audits already conducted at the federal level.

States commissions already have the ability to participate in the auditing process. In establishing a comprehensive national audit program, the Commission explicitly provided state commissions with the authority to trigger “for cause” audits. A state commission merely needs to make a written request to the entity designated by the Commission to conduct audits stating the reason why a “for cause” audit is justified.²⁰ State commissions can also participate in the federal audit process by working with the federal auditor. Therefore, a state’s interests are protected, and there is no additional need for the state to conduct its own audit.

¹⁹ See *Second Further Notice* at ¶ 150.

²⁰ See *id.* at ¶ 87.

Audits should be conducted at the federal level to ensure uniform treatment and produce the most comprehensive results. Limiting the auditing process to the federal level minimizes the potential for a state to have to comply with fifty different audits (whether “for cause” or random) each employing a different standard and requesting varying information. Limiting the auditing process also forecloses the possibility that a carrier would be audited for the same conduct twice—once by a state commission and once through the federal process. The Commission already has recognized that a system of regularly scheduled audits would be prohibitively expensive to the industry.²¹ Similarly, allowing states to conduct their own audits would be extremely expensive both to the states and the industry without a corollary benefit of improving the efficiency with which carriers use their numbering resources. Finally, conducting audits at the nationwide – rather than statewide – level will ensure that any activities which cross state boundaries will be detected and addressed appropriately.

VIII. STATES SHOULD NOT OBTAIN ACCESS TO NANPA’S DATABASE.

PCIA opposes the Commission’s tentative conclusion that states should have password-protected access to utilization and forecast data that carriers report to the NANPA. The Commission already has required NANPA to provide copies of the semi-annually reported forecast and utilization data to requesting states. Moreover, state public utility commissions are permitted to order the data in specific formats such that they can manipulate the data for their own use. Accordingly, there is no need for states to have access to the actual database storing the forecast and utilization information.

The potential harm that could result from the disclosure of disaggregated, carrier-specific data is significant and immediate. Wireless carriers provide subscriber data in their SEC

²¹ See *Second Further Notice* at ¶ 85.

filings on an aggregated basis for the entire United States, not on a state-by-state or rate center-by-rate center basis. Information at this level of granularity is highly confidential. Even within companies, this information is made available only on a highly confidential basis with the understanding that it will be protected from disclosure. Current subscribership levels and trends in subscribership are valuable competitive intelligence, and are capable of influencing Wall Street and stock values. Allowing states to have access to carrier-specific information of this nature maximizes the risk that sensitive data could be erroneously disseminated or incorrectly manipulated. Thus, only one entity should have access and control over the database.

CONCLUSION

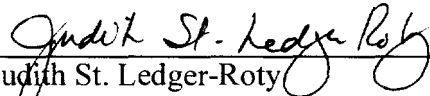
For the foregoing reasons, the FCC should encourage rate center consolidation and grant waivers of its rules prohibiting technology-specific overlays to state commissions that act in accordance with the Joint Wireless Commenters' phased-in overlay proposal presented by PCIA and wireless carriers. The FCC should also adopt a safety valve that will allow carriers to obtain needed numbering resources where they are unable to meet the utilization threshold in a given rate center. However, the FCC should not require paging carriers to participate in number pooling or develop market-based allocation systems for numbering resources.

Respectfully submitted,

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DATED: February 14, 2001

PCIA EXHIBIT A

Rate Center Analysis

Chicago 358 LATA (excluding 219 and 414 NPAs)

	Existing NPA	Current Quantity of Rate Centers	Current Quantity of Codes Needed for 8 New Carriers	Reduced Quantity of Rate Centers	Reduced Quantity of Codes Needed for 8 New Carriers	Total Quantity of Codes Saved by Reduction in Rate Centers	Quantity of NPAs Saved by Reduction in Rate Centers
	312	1	8	1	8	0	0
	630	26	208	13	104	104	0.13
	708	44	352	22	176	176	0.22
	773	10	80	5	40	40	0.05
	815	79	632	40	320	312	0.39
	847	42	336	21	168	168	0.21
Total:	N/A	202	1616	102	816	800	1.01

Boston 128 LATA

	Existing NPA	Current Quantity of Rate Centers	Current Quantity of Codes Needed for 8 New Carriers	Reduced Quantity of Rate Centers	Reduced Quantity of Codes Needed for 8 New Carriers	Total Quantity of Codes Saved by Reduction in Rate Centers	Quantity of NPAs Saved by Reduction in Rate Centers
	508	98	784	49	392	392	0.49
	617	23	184	12	96	88	0.11
	781	42	336	21	168	168	0.21
	978	57	456	29	232	224	0.28
Total:	N/A	220	1760	111	888	872	1.10

CERTIFICATE OF SERVICE

I, Michelle L. Arbaugh, hereby certify that I have caused a copy of the foregoing "Comments of the Personal Communications Industry Association" to be served on this 14th day of February, 2001, via hand delivery, upon the following:

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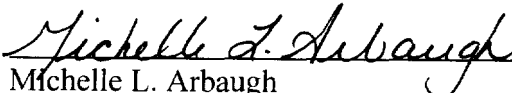
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